

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: EAST PALESTINE TRAIN	)	Case No. 4:23-cv-00242-BYP
DERAILMENT	)	
	)	JUDGE BENITA Y. PEARSON
	)	
	)	CARMEN E. HENDERSON
	)	UNITED STATES MAGISTRATE
	)	JUDGE
	)	
	)	<b><u>ORDER</u></b>
	)	

This matter was referred to the Honorable Carmen E. Henderson, United States Magistrate Judge, pursuant to 28 U.S.C. § 636 and Local Rules 72.1 and 72.2(a), for resolution of the parties' discovery disputes. *See* ECF No. 282.

A telephone conference was held on January 31, 2024, to discuss a discovery dispute raised by Defendant Oxy Vinyls against non-party NTSB relating to a *Touhy* request and subpoena served on NTSB on or about January 2, 2024. Present on the call were:

Attorneys for Plaintiffs: Seth Katz

Attorneys for Defendant Norfolk Southern: Davina Pujari

Attorneys for Defendant Oxy Vinyls: Alycia Broz, Kim Herlihy, Martha Motley

Attorney for Defendant Trinity: Nena V. Benavides

Attorney for Defendants GATX and General American: Hariklia Karis, Sydney Collier

Attorneys for non-party NTSB: Ruchi Asher, Sara DeCaro, Daria Glagoleva

On January 26, 2024, Oxy Vinyls notified the Court of a discovery dispute relating to a *Touhy* request delivered to NTSB on January 2, 2024, related to certain physical evidence that is being held by NTSB. As of January 29, 2024, the NTSB had not yet responded to the request, and given the impending fact discovery deadline of February 5, 2024, Oxy Vinyls sought the Court's intervention to facilitate a response from the NTSB. On January 31, 2024, the Court held a telephone conference regarding the dispute. Oxy Vinyls informed the Court that the NTSB had since responded to the *Touhy* request by stating that it would not agree to voluntarily release the physical evidence to Oxy Vinyls prior to the final report of the NTSB being made public, which would likely occur this summer. Oxy Vinyls informed the Court that the *Touhy* request was (primarily) two-fold: first, it sought to inspect the physical evidence at the location it was being held by the NTSB; second, it sought to further test the physical evidence only after determining that such testing was necessary.

**This Court ORDERS that by 5:00 pm today, January 31, 2024, the NTSB shall respond to Oxy Vinyls's request to inspect the specified physical evidence at the location where it is held by the NTSB.**

Defendant GATX also informed the Court that it has presented the NTSB with a separate *Touhy* request and the NTSB stated that it was reviewing the request and would attempt to respond to GATX by February 5, 2024.

Given the impending fact discovery deadline, the Court sets the following briefing schedule:

**Any party having made a *Touhy* request upon the NTSB may move no later than Wednesday, February 7, 2024, to compel the NTSB's compliance with the request. The NTSB**

shall respond to the motions by Wednesday, February 14, 2024. A hearing on the motions will be held via telephone on Wednesday, February 21, 2024, at 10:00 am. The Court will host the conference call and inform counsel by way of separate email of the telephone number for the call.

**IT IS SO ORDERED.**

Dated: January 31, 2024

s/Carmen E. Henderson  
Carmen E. Henderson  
United States Magistrate Judge